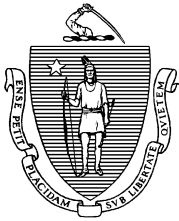


SENATE, NO. 2407, PRINTED AS AMENDED

[Senate, April 29, 2010 – Text of the Senate Bill to stabilize neighborhoods, being the text of (Senate, No. 2394, printed as amended.)]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT TO STABILIZE NEIGHBORHOODS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the citizens and neighborhoods of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

SECTION 1. The second paragraph of subclause (e) of Clause Third of section 5 of

chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by

adding the following sentence:- In any city or town that accepts this paragraph, any real estate

owned by, or held in trust for, a charitable organization for the purpose of creating community

housing, as defined in section 2 of chapter 44B, and that was purchased from an entity that

acquired the property pursuant to section 14 of chapter 244 shall be exempt until such real estate

is leased, rented or otherwise disposed of, but not for more than 7 years after such purchase.

8 **SECTION 2.** Chapter 167E of the General Laws is hereby amended by inserting after
9 section 7 the following section:-

10 Section 7A. (a) As used in this section the following words shall, unless the context
11 clearly requires otherwise, have the following meanings:

12 “Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less
13 than 50 per cent of the area median income, as periodically determined by the United States
14 Department of Housing and Urban Development; and (2) possesses assets, excluding a primary
15 residence, valued at less than \$120,000.

16 “Reverse Mortgage”, a nonrecourse consumer credit obligation in which: (1) a mortgage,
17 deed of trust, or equivalent consensual security interest securing 1 or more advances is created in
18 the consumer’s principal dwelling located in the commonwealth; and (2) any principal, interest
19 or shared appreciation or equity is due and payable, other than in the case of default, only after:
20 (i) the consumer dies; (ii) the dwelling is transferred; or (iii) the consumer ceases to occupy the
21 dwelling as a principal dwelling.

22 (b) No mortgagee shall make a reverse mortgage loan to a mortgagor unless: (i) the
23 mortgagor affirmatively opts in writing for the reverse mortgage and; (ii) at or before the closing
24 of any reverse mortgage loan the mortgagee has received written certification from a counselor
25 with a third-party organization that the mortgagor has received counseling in person relative to
26 the appropriateness of the loan transaction from the third party organization and has completed
27 an approved counseling program offered by the third party organization; provided, however, that
28 the third party organization shall have been approved by the executive office of elder affairs for
29 purposes of such counseling. A mortgagee’s failure to receive (i) a written statement from the

mortgagor affirmatively opting for the reverse mortgage, or (ii) certification from a counselor approved by the executive office of elder affairs shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section, and to further define the terms used in this section.

SECTION 3. Chapter 171 of the General Laws is hereby amended by inserting after section 65C the following section:-

Section 65C½. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less than 50 per cent of the area median income, as periodically determined by the United States Department of Housing and Urban Development; and (2) possesses assets, excluding a primary residence, valued at less than \$120,000.

“Reverse Mortgage”, a nonrecourse consumer credit obligation in which: (1) a mortgage, deed of trust or equivalent consensual security interest securing 1 or more advances is created in the consumer’s principal dwelling located in the commonwealth; and (2) any principal, interest or shared appreciation or equity is due and payable, other than in the case of default, only after: (i) the consumer dies; (ii) the dwelling is transferred; or (iii) the consumer ceases to occupy the dwelling as a principal dwelling.

(b) No mortgagee shall make a reverse mortgage loan to a mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage and; (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written certification from a counselor with a third-party organization that the mortgagor has received counseling in person relative to

the appropriateness of the loan transaction from the third party organization and has completed an approved counseling program offered by the third party organization; provided, however, that the third party organization shall have been approved by the executive office of elder affairs for purposes of such counseling. A mortgagee's failure to receive (i) a written statement from the mortgagor affirmatively opting for the reverse mortgage, or (ii) certification from a counselor approved by the executive office of elder affairs shall render the terms of the reverse mortgage unenforceable. The commissioner shall adopt regulations to administer and implement this section, and to further define the terms used in this section.

SECTION 4. Chapter 183 of the General Laws is hereby amended by striking out section 67, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

Section 67. No mortgagee shall make a reverse mortgage loan on residential property except in accordance with sections 7 and 7A of chapter 167E. For the purposes of this section, the term "residential property" shall mean a 1-to-4 family dwelling owned and occupied in whole or in part by the mortgagor and located in the commonwealth.

SECTION 5. Section 13A of chapter 186 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "law", in line 6, the following words:- and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.

SECTION 6. The General Laws are hereby amended by inserting after chapter 186, the following chapter:-

CHAPTER 186A.

TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

‘Bona fide lease or bona fide tenancy’, a lease or tenancy shall not be considered bona fide unless: the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; (2) the lease or tenancy was the result of an arms-length transaction; and (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

‘Entity’, a business organization, or any other kind of organization including, without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship or any other category of organization and any employee, agent, servant or other representative of such entity.

‘Eviction’, an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

‘Foreclosing owner’, an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years

of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244.

'Housing accommodation', any building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee or agent thereof or otherwise related to any such entity, that holds or owns mortgages or other security interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more mortgages of housing accommodations.

'Just cause', any 1 of the following: (a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 60 days after having received written notice thereof from the foreclosing owner; (c) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written bona fide

117 lease or other rental agreement which terminated, on or after the effective date of this chapter,
118 has refused, after written request or demand by the foreclosing owner, to execute a written
119 extension or renewal thereof for a further term of like duration and in such terms that are not
120 inconsistent with this chapter; (f) the tenant has refused the foreclosing owner reasonable access
121 to the unit for the purpose of making necessary repairs or improvement required by the laws of
122 the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection
123 as permitted or required by agreement or by law or for the purpose of showing the unit to a
124 prospective purchaser or mortgagee provided that none of the preceding events shall be deemed
125 just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of
126 the written notice specified in the paragraph below, a written disclosure of the tenant's right to a
127 court hearing prior to eviction.

128 The actions sets forth in clauses (a) and (b) shall not be deemed to be just cause unless
129 the foreclosing owner, within 30 days of the foreclosure, posted in a prominent location in the
130 building in which the rental housing unit is located a written notice stating the names, addresses,
131 telephone numbers and telephone contact information of the foreclosing owner, the building
132 manager or other representative of the foreclosing owner responsible for the management of such
133 building and stating the address to which rent and use and occupancy charges shall be sent;
134 provided, however, that the foreclosing owner has delivered such written notice to each tenant of
135 said housing accommodation;

136 Nothing in this chapter shall limit the rights of a third-party owner to evict a tenant at the
137 expiration of an existing lease.

138 'Mortgagee', an entity to whom property is mortgaged, the mortgage creditor or lender
139 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,
140 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's
141 rights, interests or obligations under the mortgage agreement.

142 'Mortgage servicer', an entity which administers or at any point administered the
143 mortgage; provided, however that such administration shall include, but not be limited to,
144 calculating principal and interest, collecting payments from the mortgagor, acting as escrow
145 agent or foreclosing in the event of a default.

146 'Tenant' any person or group of persons who at the time of foreclosure is entitled to
147 occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will.
148 Any person who moves into the housing accommodation owned by the foreclosing owner,
149 subsequent to the foreclosure sale, without the express written permission of the owner shall not
150 be considered a tenant under this chapter.

151 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation
152 which is used or intended for use as a residence by 1 household.

153 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing
154 owner shall not evict a tenant except for just cause or unless a binding purchase and sale
155 agreement has been executed for a bona fide third party to purchase said housing accommodation
156 from a foreclosing owner.

157 Section 3. If a foreclosing owner disagrees with the amount of rent or use and occupancy
158 rates that a tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may
159 bring a claim in district or superior court or the housing court to claim that the rent is

unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be presumed reasonable.

Section 4. A foreclosing owner that evicts a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than \$5,000. Each such illegal eviction shall constitute a separate offense.

The district and superior courts and the housing court shall have jurisdiction over an action arising from a violation of this chapter or of any ordinance or by-law adopted pursuant to this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter.

SECTION 7. Chapter 244 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out section 35A and inserting in place thereof the following section:-

Section 35A. (a). As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Borrower”, a mortgagor of a mortgage loan.

“Borrower’s representative”, an employee or contractor of a non-profit organization certified by Housing and Urban Development, an employee or contractor of a foreclosure education center pursuant to section 16 of chapter 206 of the acts of 2007 or an employee or contractor of a counseling agency receiving a Collaborative Seal of Approval from the

Massachusetts Homeownership Collaborative administered by the Citizens' Housing and Planning Association.

"Creditor", any person or entity that holds or controls, partially, wholly, indirectly, directly, or in a nominee capacity, a mortgage loan securing a residential property, including, without limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage servicer. "Creditor" shall also include any servant, employee or agent of a creditor.

"Creditor's representative", a person who has the authority to negotiate the terms of and modify a mortgage loan.

"Modified mortgage loan", a mortgage modified from its original terms including, but not limited to, a loan modified pursuant to 1 of the following: (i) the Home Affordable Modification Program; (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; (iii) any modification program that a lender uses which is based on accepted principles and the safety and soundness of the institution and recognized by the Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing Agency ; or (v) a similar federal refinance plan.

"Mortgage loan", a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

"Net present value", the present net value of a residential property based on a calculation using 1 of the following: (i) the federal Home Affordable Modification Program Base Net Present Value Model, (ii) the Federal Deposit Insurance Corporation's Loan Modification Program; or (iii) for the Massachusetts Housing Finance Agency's loan program used solely by the agency to compare the expected economic outcome of a loan with or without a loan modification.

204 “Residential property”, real property located in the commonwealth having thereon a
205 dwelling house with accommodations for 4 or less separate households and occupied, or to be
206 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
207 residential property shall be limited to the principal residence of a person; provided, further, that
208 residential property shall not include an investment property or residence other than a primary
209 residence.

210 (b) Any mortgagor of residential property shall have a 150-day right to cure a default of
211 a required payment as provided in the residential mortgage or note secured by the residential
212 property by full payment of all amounts that are due without acceleration of the maturity of the
213 unpaid balance of the mortgage; provided, however, that if a creditor certifies that: (i) it has
214 engaged in a good faith effort to negotiate and agree upon a commercially reasonable alternative
215 to foreclosure as described in subsection (c); (ii) its good faith effort has involved at least 1 meeting,
216 either in person or by telephone, between a creditor’s representative and the borrower, the borrower’s
217 attorney or the borrower’s representative; and (iii) after such meeting the borrower and the creditor
218 were not successful in resolving their dispute, then the creditor may begin foreclosure
219 proceedings after a right to cure period lasting 90 days. A borrower who fails to respond within
220 60 days to any mailed communications offering to negotiate and agree upon a commercially
221 reasonable alternative to foreclosure sent via certified and first class mail or similar service by a
222 private carrier from the lender shall be deemed to have forfeited the right to a 150-day right to
223 cure period and shall be subject to a right to cure period lasting 90 days. Nothing in this section
224 shall prohibit the borrower from affirmatively selecting a 150-day right to cure period instead of
225 meeting with the creditor to negotiate and agree upon a commercially reasonable alternative to
226 foreclosure. The right to cure a default of a required payment shall be granted once during any 3
227 year period, regardless of mortgage holder.

(c) For purposes of this section, a determination that a creditor has made a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall mean that the creditor has considered: (i) an assessment of the borrower's current circumstances including, without limitation, the borrower's current income, debts and obligations; (ii) the net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure; and (iii) the interests of the creditor including, without limitation, the interest of investors and, if the creditor has received funds from the federal government or from the commonwealth, the interest of taxpayers; provided, however, that nothing in this subsection shall be construed as prohibiting a creditor from considering other factors; provided, further, that the creditor must provide by first class and certified mail or similar service by a private carrier to a borrower documentation of good faith effort 10 days prior to meeting, telephone conversation or a meeting pursuant to subsection (b) ; provided, further, that such documentation shall include: (i) a summary of the creditors' net present value analysis and applicable data and inputs of the analysis; (ii) options of relief offered to the borrower; (iii) a certification that the options of relief or any other foreclosure alternative offered complies with current federal law or policy; and (iv) documentation of factors considered by the creditor other than those specifically enumerated in this subsection..

(d) A borrower who receives a loan modification offer from the creditor resulting from the lender's good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall respond within 30 days of receipt of first class or certified mail. A borrower shall be presumed to have responded if the borrower provides: (i) confirmation of a facsimile transmission to the creditor; (ii) proof of delivery through the United States Postal Service or similar carrier; or (iii) record of telephone call to the creditor captured on a telephone bill or pin

251 register. A borrower who fails to respond to the creditor's offer within 30 days of receipt of a
252 loan modification offer shall be deemed to have forfeited the 150-day right to cure period and
253 shall be subject to a right to cure period lasting 90 days.

254 (e) Nothing in this subsection shall prevent a creditor from offering or accepting
255 alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower
256 requests such alternatives, rejects a loan modification offered pursuant to this subsection or does
257 not qualify for a loan modification pursuant to this subsection.

258 (f) Prior to the conclusion of the right to cure period the creditor shall certify compliance with
259 this section in an affidavit. The affidavit shall include the time and place of the meeting, parties
260 participating, relief offered to the borrower, and certification that a summary of the creditor's net present
261 value analysis and applicable inputs of the analysis was provided by the creditor to the borrower by first
262 class mail and certified mail not less than 10 days prior to the meeting as required by subsection (c) and
263 certification that any modification or option offered complies with current federal law or policy. A
264 creditor shall provide a copy of the affidavit to the homeowner and file a copy of the affidavit
265 with the land court in advance of initiating any foreclosure.

266 (g) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the
267 unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a
268 default consisting of the mortgagor's failure to make any such payment in subsection (b) by any
269 method authorized by this chapter or any other law until at least 150 days after the date a written
270 notice is given by the mortgagee to the mortgagor.

271 Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand
272 to the mortgagor or (ii) when sent by first class mail and certified mail or similar service by a

private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(h) The notice required in subsection (f) shall inform the mortgagor of the following:--

(1) the nature of the default claimed on such mortgage of residential real property and of the mortgagor's right to cure the default by paying the sum of money required to cure the default;

(2) the date by which the mortgagor shall cure the default to avoid acceleration, a foreclosure or other action to seize the home, which date shall not be less than 150 days after service of the notice and the name, address and local or toll free telephone number of a person to whom the payment or tender shall be made;

(3) that, if the mortgagor does not cure the default by the date specified, the mortgagee, or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the property by a foreclosure proceeding or other action to seize the home;

(4) the name and address of the mortgagee, or anyone holding thereunder, and the telephone number of a representative of the mortgagee whom the mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion that a default has occurred or the correctness of the mortgagee's calculation of the amount required to cure the default;

293 (5) the name of any current and former mortgage broker or mortgage loan
294 originator for such mortgage or note securing the residential property;

295 (6) that the mortgagor may be eligible for assistance from the Homeownership
296 Preservation Foundation or other foreclosure counseling agency, and the local or toll free
297 telephone numbers the mortgagor may call to request this assistance;

298 (7) that the mortgagor may sell the property prior to the foreclosure sale and
299 use the proceeds to pay off the mortgage;

300 (8) that the mortgagor may redeem the property by paying the total amount
301 due, prior to the foreclosure sale;

302 (9) that the mortgagor may be evicted from the home after a foreclosure sale;

303 (10) that the mortgagor may request from the mortgagee a negotiated
304 agreement to repay the mortgage on terms that are different from or alternative to
305 the original terms of the mortgage and may request a copy of the mortgage, note,
306 disclosure statement, and payment records; and

307 (11) a declaration, appearing on the first page of the notice stating: "This is an
308 important notice concerning your right to live in your home. Have it translated at
309 once." The division of banks shall adopt regulations in accordance with this
310 section; provided; however, that such regulations shall provide that the
311 declaration shall be printed in: (i) the 5 most commonly used non-English primary
312 languages in Massachusetts, according to the most recent data available from the
313 United States Census Bureau; (ii) the 5 most commonly used non-English primary
314 languages in a particular region of the commonwealth according to census data

for that region; or (iii) whichever language the creditor has regularly used in its communication with the borrower.

(i) To cure a default prior to acceleration under this section, a mortgagor shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section. The mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 150-day notice to cure has ended.

(j) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(k) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

The commissioner of banking shall promulgate a model notice which meets the requirements of this section. Use of such a form notice, if it does not contain materially inaccurate information, shall constitute compliance with this section.

SECTION 8. Chapter 244 of the General Laws is hereby amended by striking out section 35A, as appearing in section 7, and inserting in place thereof the following section:-

Section 35A. (a) Any mortgagor of residential real property located in the commonwealth consisting of a dwelling house with accommodations for 4 or less separate households and occupied in whole or in part by the mortgagor, shall have a 90-day right to cure a default of a required payment as provided in such residential mortgage or note secured by such residential real property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of such mortgage. The right to cure a default of a required payment shall be granted once during any 5-year period, regardless of the mortgage holder.

(b) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any such payment in subsection (a) by any method authorized by this chapter or any other law until at least 90 days after the date a written notice is given by the mortgagee to the mortgagor.

Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand to the mortgagor or (ii) when sent by first class mail and certified mail or similar service by a private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or anyone holding thereunder.

(c) The notice required in subsection (b) shall inform the mortgagor of the following:--

355 (1) the nature of the default claimed on such mortgage of residential real
356 property and of the mortgagor's right to cure the default by paying the sum of
357 money required to cure the default;

358 (2) the date by which the mortgagor shall cure the default to avoid
359 acceleration, a foreclosure or other action to seize the home, which date shall not
360 be less than 90 days after service of the notice and the name, address and local or
361 toll free telephone number of a person to whom the payment or tender shall be
362 made;

363 (3) that, if the mortgagor does not cure the default by the date specified, the
364 mortgagee, or anyone holding thereunder, may take steps to terminate the
365 mortgagor's ownership in the property by a foreclosure proceeding or other action
366 to seize the home;

367 (4) the name and address of the mortgagee, or anyone holding thereunder,
368 and the telephone number of a representative of the mortgagee whom the
369 mortgagor may contact if the mortgagor disagrees with the mortgagee's assertion
370 that a default has occurred or the correctness of the mortgagee's calculation of the
371 amount required to cure the default;

372 (5) the name of any current and former mortgage broker or mortgage loan
373 originator for such mortgage or note securing the residential property;

374 (6) that the mortgagor may be eligible for assistance from the Massachusetts
375 Housing Finance Agency and the division of banks and the local or toll free
376 telephone numbers the mortgagor may call to request this assistance;

377 (7) that the mortgagor may sell the property prior to the foreclosure sale and
378 use the proceeds to pay off the mortgage;

379 (8) that the mortgagor may redeem the property by paying the total amount
380 due, prior to the foreclosure sale;

381 (9) that the mortgagor may be evicted from the home after a foreclosure sale;

382 (10) that the mortgagor may request from the mortgagee a negotiated
383 agreement to repay the mortgage on terms that are different from or alternative to
384 the original terms of the mortgage and may request a copy of the mortgage, note,
385 disclosure statement, and payment records; and

386 (11) a declaration, appearing on the first page of the notice stating: "This is an
387 important notice concerning your right to live in your home. Have it translated at
388 once." The division of banks shall adopt regulations in accordance with this
389 section; provided, however, that such regulations shall provide that the declaration
390 shall be printed in: (i) the 5 most commonly used non-English primary languages
391 in Massachusetts, according to the most recent data available from the United
392 States Census Bureau; (ii) the 5 most commonly used non-English primary
393 languages in a particular region of the commonwealth according to census data
394 for that region; or (iii) whichever language the creditor has regularly used in its
395 communication with the borrower.

(d) To cure a default prior to acceleration under this section, a mortgagor shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees relating to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section. The mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after the 90 day notice to cure has ended.

(e) A copy of the notice required by this section and an affidavit demonstrating compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in any action or proceeding to foreclose on such residential real property.

(f) A copy of the notice required by this section shall also be filed by the mortgagee, or anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of the date of the foreclosure sale and the purchase price obtained at the sale.

The commissioner of banking shall promulgate a model notice which meets the requirements of this section. Use of such a form notice, if it does not contain materially inaccurate information, shall constitute compliance with this section.

SECTION 9. Section 33 of chapter 266 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 5 to 10, inclusive, the words “(2) whoever, with intent to defraud, by a false statement in writing respecting the financial

condition, or means or ability to pay, of himself or of any other person, obtains credit from any bank or trust company or any banking institution or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny” and inserting in place thereof the following words:- (2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 255E, or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny.

SECTION 10. Said chapter 266 is hereby further amended by striking out section 34, as so appearing, and inserting in place thereof the following section:--

Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with property of any kind or with any of the benefits described in sections 33 and 33A shall be guilty of larceny.

SECTION 11. Said chapter 266 is hereby further amended by inserting after section 35 the following section:-

Section 35A. (a) As used in this section, the following words shall have the following meanings, unless the context clearly otherwise requires:--

“Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or compensation in any form.

438 “Material omission”, the omission or concealment of a material fact necessary to prevent
439 a statement from being misleading, in the light of the circumstances under which the statement is
440 made.

441 “Mortgage lending process”, the process through which a person seeks or obtains a
442 residential mortgage loan including, but not limited to, solicitation, application, origination,
443 negotiation of terms, third-party provider services, underwriting, signing and closing, and
444 funding of the loan; provided, however, that documents involved in the mortgage lending
445 process shall include, but not be limited to, uniform residential loan applications or other loan
446 applications, appraisal reports, HUD-1 settlement statements, supporting personal documentation
447 for loan applications such as W-2 forms, verification of income and employment, bank
448 statements, tax returns and payroll stubs and any required disclosures.

449 “Pattern of residential mortgage fraud”, violation of subsection (b) in connection with 3
450 or more residential properties.

451 “Person”, a natural person, corporation, company, limited liability company, partnership,
452 real estate trust, association or any other entity.

453 “Residential mortgage loan”, a loan or agreement to extend credit made to a person,
454 which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other
455 document representing a security interest or lien upon any interest in a 1-to4-family residential
456 property located in the commonwealth, including the renewal or refinancing of any such loan.

457 (b) Whoever intentionally: (1) makes or causes to be made any material statement that is
458 false or any statement that contains a material omission, knowing the same to be false or to
459 contain a material omission, during or in connection with the mortgage lending process, with the

intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or (4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

(c) If a defendant is convicted of a violation of this section as a result of conduct or an omission by an employee or agent of the defendant the court may consider the following mitigating factors with respect to sentencing:

(1) that the defendant had instituted and maintained at the time of the violation, and continues to have, a written policy including:

(i) a prohibition against conduct that violates this section by employees and agents of the defendant;

(ii) penalties or discipline for violation of the policy;

(iii) a process for educating employees and agents concerning the policy and consequences of a violation thereof; and

(iv) with respect to a defendant authorized to conduct criminal history checks for the employee's or agent's position, a requirement for a criminal history check before employing an employee or engaging an agent and a requirement that the defendant will not employ or engage an individual who has been convicted of a crime involving fraud;

(2) a demonstration that the defendant enforces the policy described in clause (1); and

(3) prior to the violation of this section the defendant provided a copy of the policy described in clause (1), including a description of the consequences for violating the policy, to the employee or agent who committed the violation.

SECTION 11A. Chapter 277 of the General Laws is hereby amended by inserting after section 62B the following section:-

Section 62C. A violation of section 35A of chapter 266 may be prosecuted and punished in:

(1) the county in which the residential property for which a mortgage loan is being sought is located;

(2) the county in which any act was performed in furtherance of the violation;

(3) the county in which any person alleged to have violated this section had control or possession of any proceeds of, or other funds received as a result of the violation;

(4) the county in which a closing on the mortgage loan occurred; or

(5) the county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar of deeds.

SECTION 12. Notwithstanding any general or special law to the contrary, the commissioner of banks shall establish a 2-year pilot program to implement a state Massachusetts abandoned property registry, hereinafter referred to as MAP. Such registry shall require all property owners, including lenders, trustees and services companies, to properly register and maintain vacant or foreclosing properties located in the commonwealth. Law enforcement entities including, but not limited to, the attorney general and municipalities shall have access to the MAP. The commissioner of banks shall have enforcement authority of the pilot program including, but not limited to, the authority to impose civil assessments. Said commissioner shall adopt rules and regulations governing the implementation and administration of the MAP pilot program.

SECTION 13. The commissioner of banks shall adopt the rules and regulations required under section 12 not later than 120 days after the effective date of this act.

523 **SECTION 14.** Section 4 shall take effect 90 days after the effective date of this act.
524 Sections 2 and 3 shall take effect 90 days after the effective date of this act; provided, however,
525 that the in-person counseling requirement in subsection (b) of section 7A of chapter 167E of the
526 General Laws and in subsection (b) of section 65C1/2 of chapter 171 of the General Laws shall
527 take effect 18 months after the effective date of this act.

528 **SECTION 15.** Section 8 shall take effect on January 1, 2016.